City of Seattle

Gregory J. Nickels, Mayor
Department of Design, Construction and Land Use
D. M. Sugimura, Acting Director

CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE DEPARTMENT OF DESIGN, CONSTRUCTION AND LAND USE

Application Number: 2202634

Applicant Name: Catherine Tolosa for VoiceStream Wireless

Address of Proposal: 1703 Union Street

SUMMARY OF PROPOSED ACTION

Master Use Permit to establish use for future construction of a minor communication utility (VoiceStream Wireless) consisting of three (3) panel antennas (3-sector, 1 antenna per sector) on the roof of an existing apartment building. Project includes equipment cabinet to be located in the utility room within the structure below grade.

The following approvals are required:

Administrative Conditional Use Review - to allow a minor communication utility in a residential Lowrise 3 (L3) zone.

SEPA - Environmental Determination - Chapter 25.05, Seattle Municipal Code

SEPA DETERMINATION: [ ] EXEMPT [ ] DNS [ ] MDNS [ ] EIS

[X] DNS with conditions

[ ] DNS involving non-exempt grading or demolition, or involving another agency with jurisdiction.

BACKGROUND DATA

Site Location and Description

The subject property is located in a Multi-Family Residential Lowrise 3 (L3) Zone located at 1703 Union Street in the Downtown/Central neighborhood of Seattle. The subject site is located on Union Street between 17th Avenue and 18th Avenue, east of Interstate 5.

The site is developed with an existing three-story apartment building and associated yard and parking areas. The surrounding zoning and uses are:

North: Multi-Family Residential, L3 zone
East: Multi-Family Residential, L3 zone
South: Multi-Family Residential, L3 zone
West: Multi-Family Residential, L3 zone

Proposal Description

Master Use Permit to establish use for future construction of a minor communication utility (VoiceStream Wireless) consisting of three (3) panel antennas (3-sector, 1 antenna per sector) on the roof of an existing apartment building. Project includes equipment cabinet to be located in the utility room within the structure below grade.

The maximum proposed height for the top of the antennas and screening cabinet is 43 feet above the existing grade level (the height of the building edge as measured from the lowest ground elevation of the building). The height limit for the L3 zone is thirty (30) feet above grade. Therefore, approval through an Administrative Conditional Use Permit is required to exceed the height limit of the zone as well as to locate the minor communication utility in a residential zone.

Public Comment

The public comment period for this proposal was extended to July 24, 2002 at the request of the public. DCLU received 8 comment letters regarding this proposal, from concerned neighbors objecting to the proposal.

Analysis of Public Comment

Review of this proposal reveals that the application complies with the most current requirements of the Seattle Municipal Code (SMC) with regards to screening (SMC 23.57.016.C & 23.57.011.C.5), setbacks (SMC 23.45.014.A) and allowed radiation levels (see Applicant's Statement of Federal Communications Commission Compliance). The concerned citizens provide no evidence as to how the application conflicts with any provision of the Seattle Municipal Code.

ADMINISTRATIVE CONDITIONAL USE CRITERIA AND ANALYSIS

Section 23.57.011.B of the Seattle Municipal Code (SMC) provides that a minor communication utility may be permitted in a Multi-Family zone as an Administrative Conditional Use subject to the requirements and conditioning considerations of this Section enumerated below:

1. *Section 23.57.011.B.1: The project shall not be substantially detrimental to the residential character of nearby residentially zoned areas, and the facility and the location proposed shall be the least intrusive facility at the least intrusive location consistent with effectively providing service. In considering detrimental impacts and the degree of intrusiveness, the impacts considered shall include but not be limited to visual, noise, compatibility with uses allowed in the zone, traffic, and the displacement of residential dwelling units.*

   According to the plans submitted, the antennas will conform to codified requirements regarding setbacks and visual impacts. The proposed facility is to be located behind RF transparent fiberglass walls that will obscure the antennas from view. The applicant's plans depict integration of the screening facility into the architectural design of the existing building via three faux brick fiberglass enclosures designed to mimic the appearance of brick chimneys, which would match the color and pattern (brick) of the host building.

   Some neighboring views would be altered by the presence of the constructed facility, but not obscured.

   Traffic will not be affected by the presence of the constructed facility. The plans do not give reason to expect unacceptable noise levels. No dwelling units will be displaced in conjunction with this application. Thus, the proposal will not be substantially detrimental to the residential character of nearby residentially zoned areas (see applicant's declarations and submitted plans).

2. *Section 23.57.011.B.2: The visual impacts that are addressed in section 23.57.016 shall be mitigated to the greatest extent practicable.*

   According to the plans submitted and the affidavit from the applicant's RF engineer, David J. Pinion, dated May 31, 2002, the proposed antennas will be entirely screened from view and will be as inconspicuous as possible, within the parameters of the SMC, while remaining functionally effective. Therefore, the proposal complies with this criterion.

3. *Section 23.57.011.B.3: Within a Major Institution Overlay District, a Major Institution may locate a minor communication utility or an accessory communication device, either of which may be larger than permitted by the underlying zone, when:*

   a.) the antenna is at least one hundred feet (100') from a MIO boundary, and
   b.) the antenna is substantially screened from the surrounding neighborhood's view.

The proposed site is not located within a Major Institution Overlay District. Therefore, this requirement does not apply to the subject proposal.

4. *Section 23.57.011.B.4: If the minor communication utility is proposed to exceed the zone height limit, the applicant shall demonstrate that the requested height is the minimum necessary for the effective functioning of the minor communication utility.*

The applicant has provided evidence (E-mail to John Bissell from Paul Wozniak, dated February 11, 2003) that the proposed antenna height, 43 feet above existing grade, is the minimum height necessary to ensure the effective functioning of the utility in the most inconspicuous manor possible. Therefore, the proposal complies with this criterion.

5. *Section 23.57.011.B.5: If the proposed minor communication utility is proposed to be a new freestanding transmission tower, the applicant shall demonstrate that it is not technically feasible for the proposed facility to be on another existing transmission tower or on an existing building in a manner that meets the applicable development standards. The location of a facility on a building on an alternative site or sites, including construction of a network that consists of a greater number of smaller less obtrusive utilities, shall be considered.*

According to the plans submitted, the proposed minor communication utility will not be a new freestanding transmission tower. Therefore, this requirement does not apply to the subject proposal (see applicant's declarations and submitted plans).

6. *Section 23.57.011.C.1, Location: Minor communications utilities and accessory communications devices regulated pursuant to Section 23.57.002…*

a.) are prohibited in a required front or side setback;
b.) may be located in a required rear setback, except for transmission towers.

The plans submitted do not propose communications devices in front, side or back setbacks. Therefore, the proposal complies with these criteria (see applicant's declarations and submitted plans).

c.) In all Lowrise, Midrise and Highrise zones, minor communication utilities and accessory communications devices may be located on rooftops of buildings, including sides of parapets and penthouses above the roofline. Rooftop space within the following parameters shall not count toward meeting open space requirements: the area eight feet (8') from and in front of a directional antenna and at least two feet (2') from the back of a directional, or, for an omnidirectional antenna, eight feet (8') away from the antenna in all directions. The Seattle-King County Public Health Department may require a greater distance for paging facilities after review of the Non-Ionizing Electromagnetic Radiation (NIER) report.

According to the plans submitted by the applicant, the antennas will be located on the roof of the host structure. There is no conflict with the site requirements for open space in this instance as there is adequate open space at ground level without utilizing the roof for such purposes. Therefore, the proposal complies with this criterion (see applicant's declarations and submitted plans).

7. *Section 23.57.011.C.2: Height and Size.*

   a.) *The height limit of the zone shall apply to minor communication utilities and accessory communication devices, except as may be permitted in subsection C of this section.*

   The proposed height of the minor communication utility antennas and screening facilities adds less than 15 additional feet of height to the existing apartment structure per the requirements of SMC 23.57.011.C.2.c. Therefore, the proposal complies with this criterion.

8. *Section 23.57.011.C.3 Visual Impacts: All minor communication utilities and accessory communication devices, except for facilities located on buildings designated by the Seattle Landmarks Preservation Board, facilities governed by Section 23.57.014, and amateur radio towers, shall meet the standards set forth in Section 23.57.016.*

   The proposal meets the screening standards set forth in SMC 23.57.016. Therefore, this criterion has been satisfied.

9. *Section 23.57.011.C.4 Access and Signage: Access to transmitting minor communication utilities and to accessory communication devices shall be restricted to authorized personnel by fencing or other means of security. Warning signs at every point of access to the rooftop or common area shall be posted with information on the existence of radio-frequency radiation.*

   There is one roof access shown on the plans. It is proposed as a locking trapdoor. Locks and warning signs are depicted on the plans at this external point of access to the roof. Therefore, the proposal complies with this criterion (see applicant's declarations and submitted plans). The accessory communication devices will be contained within locked equipment cabinets to be located in the utility room within the existing apartment building.

10. *Section 23.57.011.C.5 Reception Window Obstruction: When, in the case of an accessory communications device or minor communications utility that would otherwise comply with this section, the strict adherence to all development standards would result in reception window obstruction in all permissible locations on the subject lot, the Director may grant a waiver from the screening requirements of Section 23.57.016.*

The applicant is not requesting relief from the screening requirements of this chapter. Therefore, the proposal complies with this criterion (see applicant's declarations and submitted plans).

11. 23.57.016 Visual Impacts and Design Standards:

A. Telecommunication facilities shall be integrated with the design of the building to provide an appearance as compatible as possible with the structure. Telecommunication facilities, or methods to screen or conceal facilities, shall result in a cohesive relationship with the key architectural elements of the building.

The applicant's plans depict integration of the screening facility into the architectural design of the existing building by proposing a screen shape, color and pattern similar to that of the host building (faux brick chimneys). Therefore, the proposal complies with this criterion (see applicant's declarations and submitted plans).

C. If mounted on a flat roof, screening shall extend to the top of communication facilities except that whip antennas may extend above the screen as long as mounting structures are screened. Said screening shall be integrated with architectural design, material, shape and color. Facilities in a separate screened enclosure shall be located near the center of the roof, if technically feasible. Facilities not in a separate screened enclosure shall be mounted flat against existing stair and elevator penthouses or mechanical equipment enclosures shall be no taller than such structures.

The applicant's plans depict screening that extends to the top of the proposed facilities. The proposed facility is to be located behind RF transparent fiberglass walls that will completely obscure the antennas from view. The applicant's plans depict integration of the screening facility into the architectural design of the host building via fiberglass enclosures and parapet patterns and colors, which generally match the color and pattern of the host building. Therefore, the proposal complies with this criterion (see applicant's declarations and submitted plans).

F. New antennas shall be consolidated with existing antennas and mechanical equipment unless the new antennas can be better obscured or integrated with the design of other parts of the building.

No existing antennas or minor communication utility equipment exists on the subject structure. Therefore, the proposal complies with this criterion (see applicant's declarations and submitted plans).

Summary

The proposed project is consistent with the City of Seattle Municipal Code as it applies to wireless communication utilities. The facility is minor in nature and will not be detrimental to the surrounding area while providing needed and beneficial wireless communications service to the area.

The proposed project will not require the expansion of public facilities and services for its construction, operation and maintenance. The site will be unmanned and therefore, will not require waste treatments, water or management of hazardous materials. Once installation of the facility has been completed, approximately one visit per month would occur for routine maintenance. No other traffic would be associated with the project.

DECISION - ADMINISTRATIVE CONDITIONAL USE

APPROVED.

ANALYSIS - SEPA

Environmental review resulting in a Threshold Determination is required pursuant to the State Environmental Policy Act (SEPA), WAC 197-11, and the Seattle SEPA Ordinance (Seattle Municipal Code Chapter 25.05).

The SEPA Overview Policy (SMC 25.05.665 D) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, certain neighborhood plans, and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority. The Overview Policy states, in part: *"Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation,"* subject to some limitations. Under such limitations/circumstances (SMC 225.05.665 D1-7), mitigation can be considered.

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated June 4, 2002. The information in the checklist, public comment, and the experience of the lead agency with review of similar projects forms the basis for this analysis and decision.

Short-Term Impacts

Environmental Health

The Federal Communications Commission (FCC) has pre-empted State and local governments from regulating personal wireless service facilities on the basis of environmental effects of radio frequency emissions. As such, no mitigation measures are warranted pursuant to the SEPA Overview Policy (SMC 25.05.665).

The applicant has submitted a "Statement of Federal Communication Commission Compliance for Personal Wireless Service Facility" and an accompanying "Affidavit of Qualification and Certification" for this proposed facility giving the calculations of radiofrequency power density at roof and ground levels expected from this proposal and attesting to the qualifications of the Professional Engineer who made this assessment. This complies with the Seattle Municipal Code Section 25.10.300 that contains Electromagnetic Radiation standards with which the proposal must conform. The Department's experience with review of this type of installation is that the EMR emissions constitute a small fraction of that permitted under both Federal standards and the standards of SMC 25.10.300 and therefore, pose no threat to public health.

Construction and Noise Impacts

Codes and development regulations applicable to this proposal will provide sufficient mitigation for most impacts. The initial installation of the antennas and construction of the equipment room may include loud equipment and activities. This construction activity may have an adverse impact on nearby residences. Due to the close proximity of nearby residences, the Department finds that the limitations of the Noise Ordinance are inadequate to appropriately mitigate the adverse noise impacts associated with the proposal. The SEPA Construction Impact policies, (SMC 25.05.675.B) allows the Director to limit the hours of construction to mitigate adverse noise and other construction-related impacts. Therefore, the proposal is conditioned to limit construction activity to non-holiday weekday hours between 7:30 a.m. and 6:00 p.m.

DECISION - SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

[X] Determination of Non-Significance. This proposal has been determined not to have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21.030(2)(c).

[ ] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21.030(2)(c).

CONDITIONS - ADMINISTRATIVE CONDITIONAL USE

None.

CONDITIONS - SEPA

During Construction

The following condition to be enforced during construction shall be posted at the site in a location on the property line that is visible and accessible to the public and to construction personnel from the street right-of-way. If more than one street abuts the site, conditions shall be posted at each street. The conditions will be affixed to placards prepared by DCLU. The placards will be issued along with the building permit set of plans. The placards shall be laminated with clear plastic or other waterproofing material and shall remain posted on-site for the duration of the construction.

1. In order to further mitigate the noise impacts during construction, the hours of construction activity shall be limited to non-holiday weekdays between the hours of 7:30 a.m. and 6:00 p.m. This condition may be modified by DCLU to allow work of an emergency nature or allow low noise interior work. This condition may also be modified to permit low noise exterior work after approval from the Land Use Planner.

Signature: (signature on file) Date: February 17, 2003
John Bissell, Contract Land Use Planner
Department of Design, Construction and Land Use
Land Use Services

JS:vr

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